
IN THE MATTER OF GRIEVANCE ARBITRATION BETWEEN

MINNESOTA RIVER VALLEY
SPECIAL EDUCATION COOPERATIVE,

Employer,

-and-

ARBITRATOR'S AWARD
BMS Case No. 05-PA-588
(Severance Pay)

MINNESOTA RIVER VALLEY
EDUCATION ASSOCIATION,

UNION.

ARBITRATOR:	Rolland C. Toenges
GRIEVANT:	Carol Vilendrer
DATE GRIEVANCE FILED:	October 4, 2004
DATE & PLACE OF HEARING:	September 21, 2005 Jordan, Minnesota
DATE HEARING CLOSED:	December 10, 2005
DATE OF AWARD:	February 6, 2006

ADVOCATES

FOR THE EMPLOYER:

Paul C. Ratwik, Attorney
Ratwik, Roszak & Maloney, P.A.

Amy Mace, Attorney
Ratwik, Roszak & Maloney, P.A.

FOR THE UNION:

Rebecca H. Hamblin, Attorney
Education Minnesota

Susan Vento, Field Staff
Education Minnesota

WITNESSES

Kay Larsen, Former MRVSEC Director
Dr. Lezlie P. Olson, Director, MRVSEC

Joan Moore, Teacher
Mike Orum, Former Teacher
Carol Vilendrer, Grievant

ISSUE

Did the Employer violate Article XVIII, Section 1 of the 2001–2003 Collective Bargaining Agreement when it failed to pay severance to the Grievant?

JURISDICTION

The matter at issue, regarding interpretation of terms and conditions of the Collective Bargaining Agreement (CBA) between the Parties, came on for hearing pursuant to the grievance procedure contained in said agreement. The Grievance Procedure (Article XIX) provides for arbitration of grievances that cannot be resolved by the Parties.¹

¹ Article XIX.

Section 8. ARBITRATION PROCEDURES: In the event that the teacher and the Board are unable to resolve any grievance, the grievance may be submitted to arbitration as defined herein:

Subd. 1. Request: A request to submit a grievance to arbitration must be in writing signed by the aggrieved party, and such request must be filed in the office of the Director within ten (10) days following the receipt of the decision in Level III of the Grievance procedure.

Subd. 2. Prior Procedure Required: No grievance shall be considered by the arbitrator which has not been first duly processed in accordance with the grievance procedure and appeal provisions.

Subd. 3. Selection of Arbitrator: Upon the proper submission of a grievance under the terms of this procedure, the parties shall, within ten (10) days after the request to arbitrate, attempt to agree upon the selection of an arbitrator. If no agreement on an arbitrator is reached, either party may request the Bureau of Mediation Services to appoint an arbitrator, pursuant the PELRA, providing such request is made within twenty (20) days after request for arbitration. The request shall ask that the appointment be made within thirty (30) days after the receipt of said request. Failure to agree upon an arbitrator or the failure to request an arbitrator from the Bureau of Mediation Services within the time periods provided herein shall constitute a waiver of the grievance.

Subd. 5. Hearing: The grievance shall be heard by a single arbitrator, and both parties may be represented by such person or persons as they may choose and designate, and the parties shall have the right to a hearing at which time both parties will have the opportunity to submit evidence, offer testimony, and make oral or written arguments relating to the issues before the arbitrator. The proceeding before the arbitrator shall be a hearing de novo.

The Parties selected Rolland C. Toenges as the Arbitrator, from a list provided by the Minnesota Bureau of Mediation Services, to hear and render a decision in the interest of resolving the disputed matter.

The Arbitration hearing was conducted as provided by the terms and conditions of the CBA and the Public Employment Labor Relations Act (MS 179A.01 – 30). The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matter in dispute.

The Parties stipulated that the matter in dispute was arbitrable. There was no request for a stenographic record of the hearing. All witnesses were sworn under oath.

Post hearing briefs were received from the Parties on October 10, 2005. The Arbitrator held the record open for sixty days pending receipt of any reply briefs by the Parties. Being none, the hearing was closed December 10, 2005.

Subd. 6. Decision: The decision of the arbitrator shall be rendered within thirty (30) days after the close of the hearing. Decisions by the arbitrator in cases properly before him/her shall be final and binding upon the parties, subject, however, to the limitations of arbitration decision as provided in the PELRA. The arbitrator shall issue a written decision and order including findings of fact, which shall be based upon substantial and competent evidence presented at the hearing. All witnesses shall be sworn upon oath by the arbitrator.

Subd. 7. Expenses: Each party shall bear its own expenses in connection with arbitration including expenses relating to the parties' representatives, witnesses, and any other expenses which the party incurs in connection with presenting its case in arbitration. A transcript or recording shall be made of the hearing at the request of either party. However, the party ordering the court reporter and /or transcript shall pay for a reporter and/or a transcript. The parties shall share equally fees and expenses of the arbitrator, and any other expenses, which the parties mutually agree, are necessary for the conduct of the arbitration.

Subd. 8. Jurisdiction: The arbitrator shall have jurisdiction over disputes or disagreements relating to grievances properly before the arbitrator pursuant to the terms of this procedure. The jurisdiction of the arbitrator shall not extend to proposed changes in terms or conditions of employment as defined herein and contained in this written agreement; nor shall an arbitrator have jurisdiction over any grievance which has not been submitted to arbitration in compliance with the terms of the grievance and arbitration procedure as outlined herein; nor shall the jurisdiction of the arbitrator extend to matters of inherent managerial policy, which shall include but are not limited to such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, and selection and direction and number of personnel. In considering any issue in dispute, in its order the arbitrator shall give due consideration to the statutory rights and obligations of the public school district to efficiently manage and conduct its operation with the legal limitations surrounding the financing of such operations.

BACKGROUND

The Minnesota River Valley Special Education Cooperative, 993 (Employer), is a joint independent school district established under the “Joint Powers Statute” to exclusively serve students with special education needs. The Cooperative was formed in the mid 1970’s and includes the school districts of Shakopee, Prior Lake, Jordan, New Prague and Montgomery. The governing board is made up of one board member from each of the participating school districts.

The Cooperative staff includes teachers in all special educational areas, psychologists, Para-professionals, business office, bus drivers and maintenance. There are some 240 full time and part time employees of which about 80 are teachers.

The Minnesota River Valley Education Association (Union) is the exclusive representative of teachers employed by the Cooperative. CBA’s negotiated between the Union and Employer date back to the early 1990’s.² The CBA relevant to the instant grievance was in effect from July 1, 2003 through June 30³, 2005.⁴

The Grievant taught mentally handicapped students for some 23 years at the Cooperative. The Grievant was active in Union affairs having served as Union President and on numerous Union committees. She served on the Union’s negotiating committee for the first CBA and was involved in all but two CBA’s.

The instant grievance relates to the Employer’s denial of severance pay to the Grievant upon her resignation from the Cooperative. The Grievant resigned employment in July of 2004 to accept a teaching position with another school district. The Employer denied her severance pay on the basis that, in order to qualify, she must retire from teaching.

The Union contends that the Grievant is entitled to the severance pay irrespective of her reason for leaving the Cooperative and what work she engaged in thereafter.

The 1991-1993 CBA between the Parties contained a provision (Article XVII) titled “Severance Pay.”⁵ Under this provision, employees were eligible for severance pay if they were at least 50 years of age, had completed 20 years of professional service and submitted a written resignation accepted by the Employer. Full time employees accumulated five (5) days of credit for each full year of service and part time employees received this credit on a pro-rata basis. These credits were to be paid at the teacher’s basic daily rate “at the time of retirement.” Additionally, the percentage of these credits paid was based on the teacher’s age at the time of “early retirement.” For example, a teacher retiring early at age 60 received 100 % of the credits, but a teacher retiring at

² Joint Exhibit #7.

³ Joint Exhibit #3

⁴ Joint Exhibit #3

⁵ Joint Exhibit #7

normal retirement age (65 or later) received none. This part of the severance pay language was later to be modified by the Parties due to a concern that the declining benefit based on age would be interpreted as a form of age discrimination.

Article XVII of the 2001-2003 CBA was changed from earlier CBA's in the following way:

“Section 1. Twenty-year Employment Benefit” was added.

To be eligible for severance pay, a teacher must be employed before 10/1/91.

The severance benefit was set at \$30,000, to be reduced by the amount of any Employer 403b matching contribution, excluding earnings from such contribution.

Section 2. Language was added establishing a voluntary 403b pre-tax investment plan for employees. Employees with the required years of service were eligible to participate and receive matching Employer contributions up to a lifetime maximum of \$25,000.

The effect of these language changes in the 2001-2003 CBA was to eventually phase out severance pay (only employees hired before 10/1/91 were to be eligible) and to substitute a 403b plan. Employees eligible for severance pay could participate in the 403b plan until their retirement but their severance pay would be reduced by the Employer's contribution to the 403b plan.

The Parties also became concerned that a teacher upon reaching eligibility for severance pay, even though not yet retiring, may become obligated to pay taxes based on the value of the severance benefit under the Internal Revenue Service principle of “Constructive Receipt.” In early 2002, the Parties signed a Memorandum of Understanding that modified the 2001-2003 CBA. This modification in effect provided an arrangement whereby, if the principle of “Constructive Receipt” were applied, the Employer would pay the tax required of the teacher and recover an equal amount, if and when the teacher retires or otherwise severs employment.⁶

Article XVII of the CBA was again modified in the 2003-2005 negotiations to incorporate the above “Memorandum of Understanding” and to provide that the language relating to severance pay is to be removed when the last eligible employee has ended employment with the Employer.

JOINT EXHIBITS

Joint Exhibit #1. CBA, July 1, 2001 through June 30, 2003.

⁶ Joint Exhibit #2.

Joint Exhibit #2. Memorandum of Understanding dated February 2002.

Joint Exhibit #3. CBA, July 1, 2003 through June 30, 2005.

Joint Exhibit #4. Letter of resignation dated July 12, 2004, from Carol A. Vilendrer.

Joint Exhibit #5. Multiple memos and documents, dated October 4, 2004 through December 16, 2005, R.E. grievance of Carol Vilendrer.

Joint Exhibit #6. Letter, dated September 28, 2004 – Employer response to grievance.

Joint Exhibit #7. CBA, Article XVII, July 1, 1991 through June 30, 1993.

Joint Exhibit #8. CBA, Article XVII, July 1, 1999 through June 30, 2001.

UNION EXHIBITS

Union Exhibit #1. Memo, Informal Discussion, dated 9/28/2004.

Union Exhibit #2. Negotiating Notes, RE. Memorandum of Understanding, Interests and Tentative Agreement.

EMPLOYER EXHIBITS

Employer Exhibit #1. Negotiations Notes, R.E. Severance Pay.

Employer Exhibit #2. Temporary Agreement, dated 6/18/2001.

Employer Exhibit #3. Issues and Interests, 2001-2003 negotiations.

Employer Exhibit #4. Bargaining Interests, undated.

Employer Exhibit #5. Negotiations Agenda, June 6, 2001 and Bargaining Interests.

Employer Exhibit #6. Negotiations Agenda, June 14, 2001 with notes.

POSITION OF THE PARTIES

THE UNION SUPPORTS ITS CASE WITH THE FOLLOWING:

- The facts of the case are largely undisputed.
- This is a straightforward case that should have never gone to arbitration.
- It is undisputed that the Grievant meets the three criteria for severance pay.
- Nowhere in the CBA language does it say that the Grievant must retire from teaching – the focus of the language is on leaving employment with the Employer.
- The only way in which to give meaning to the CBA language is that “retirement” means “retirement” from employment with the Employer, not from teaching.
- The primary rule in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as a whole.
- To agree with the Employer, the Arbitrator would have to read in the words “from teaching” to follow the word “retirement” and would have to ignore the words and phrases “resign”, “severance benefit” and “departure” from employment with the Employer.
- The burden is on the Employer to show that it informed the Union of its position and the Union agreed - the Employer utterly failed to do so.
- The fact that the severance benefit was, until the 2001-2003 CBA based on both years of service and age, is irrelevant to whether one has to leave the teaching profession to qualify.
- The issues of age discrimination and “Constructive Receipt” are red herrings to the issue in dispute.
- If anything the “Constructive Receipt” issue strengthens the Grievant’s case since she is identified among those who are impacted by the section referencing “ends employment.” This language sunsets, not when the last identified employee retires, but when the teacher “ends employment.”
- The Grievant is the first among those identified to “end” her employment and she is therefore the first to be eligible to receive the severance benefit.
- The Employers claim that the Parties intended make certain language changes in the 2001-2003 CBA is without merit as none of the signatures remembered negotiating this language. Even if true, these changes would not have changed the Grievant’s entitlement to the severance benefit. That language does not appear in the CBA and should be given no weight.
- Testimony of the Union’s witnesses and evidence shows that the benefit was intended to reward teachers for years of service.

- The record shows that the Union identified its interests in “severance and retirement” benefits as including “reward staff for years of service” and “give teachers a feeling of support and value.”
- The Employer identified its interests as including “be responsible to our long term employees.”
- Since the language in dispute is clear on its face, the intent of the language is irrelevant.
- Regardless of the intent behind it, the Grievant has worked 23 years for the Employer and earned the benefit, whether framed as a retention benefit and/or reward for years of faithful service.
- The Employer’s financial liability to the Grievant is identical to what it would have owed her had she left teaching.
- The Employer would punish the Grievant for “leaving the District’s employ” to teach elsewhere after 23 years of faithful service.
- Employer witnesses agreed that, under their interpretation, the Grievant would qualify for the benefit if after resigning she was not employed in any capacity, or if she was employed as anything but a teacher.
- The Employer’s interpretation brings about an absurd result, not to mention being impossible to enforce.
- If the Grievance had just quit and said nothing about taking another teaching job she would have received the benefit. The Grievant’s commitment to teaching and children is being punished, not rewarded.
- The Employer should be ordered to immediately pay the Grievant the severance pay to which she is entitled plus interest.
- The arbitrator must retain jurisdiction over the remedy matter until the Parties have agreed to the correct dollar figure.

THE EMPLOYER SUPPORTS ITS CASE WITH THE FOLLOWING:

- The CBA, Article XVII has included a retirement benefit since at least 1991-1993.

- The “early retirement benefit” was included in the CBA until the 2001-2003 CBA, when it was changed due to concerns that the declining benefit based on age could be viewed as age discrimination.
- The early retirement benefit was contained in Article XVII of the 1999-2001 CBA and the terminology referred to both “severance” and “retirement,” however eligibility was tied to “retirement.”
- Article XVII obviously encouraged teachers to retire early, because the earlier that they retired the higher the percentage of their pay they were eligible to receive.
- Although in the 2001-2003 CBA negotiations the Parties agreed to delete the declining age scale, the Parties did not intend, or express any intent to change the basic nature or purpose of the retirement benefit.
- The language “Twenty-Year Employment Retirement Benefit” was not changed during the 2003-2005 CBA negotiations.
- The Grievant submitted a letter of resignation in which she noted that she was quitting to accept a teaching job in another school district and there was no reference to any intent to retire. Further, the Grievant did not assert that she was or is eligible for benefits under the Teachers Retirement Act (TRA).
- An employee “must retire” in order to receive the benefit set forth in Article XVII.
- Although the CBA does not define “retirement,” the general principles of contract interpretation (“the plain meaning rule”) support the Employer’s position.
- The common definition of “retirement,” in the context of education, is when an employee leaves the teaching profession and no longer works with students.
- When an employee retires, it is Employer practice to have a retirement party at which time the retiree is presented an award and plaque. This is not done when a teacher quits for another teaching job.
- Current Director, Olson, testified that the common meaning of the word “retirement” means to quit working and not to resume working in your profession. She explained that Minnesota law defines “retirement” as withdrawal from active teaching service.
- “In the absence of a showing of mutual understanding to the contrary, the usual and ordinary definition of terms as defined by a reliable dictionary should govern.”

- Random House Webster's College Dictionary defines "retire" as "to give up or withdraw from an office, occupation, or career, usually because of age."
- The same dictionary defines "retirement" as "the act of retiring or the state of being retired."
- The cited dictionary definitions support the Employer's position that the Grievant did not retire and therefore does not qualify for the benefit she seeks.
- The testimony of witnesses for both the Union and Employer agreed that the Parties never explicitly discussed the meaning of the word "retirement" as it never came up during negotiations.
- Even though the Grievant was involved in negotiations and during that time was actively looking for and had accepted employment with another school district, she never brought up the issue of whether she would be eligible for the retirement benefit if she quit for another teaching job.
- Because the Grievant has not retired, the Arbitrator must conclude that she is not entitled to the "twenty-year employment retirement benefit."
- The Parties did not intend to change the fundamental nature of the benefit as a "retirement benefit" when they revised the relevant language in the 2001-2003 negotiations.
 - When the Parties revised the Article XVII to delete the declining age scale, they agreed to do so in manner that would provide eligible teachers with a benefit of comparable value.
 - The benefit of comparable value (\$30,000) was determined by calculating when most teachers would meet retirement eligibility for TRA purposes.
 - Using TRA eligibility as the guiding principle demonstrates that the purpose of the language was to provide the benefit when employees retired.
 - Interpreting the benefit, in Article XVII of the 2003-2005 CBA, to be a "retirement benefit" is entirely consistent with the previous nature of the benefit as an "early retirement" benefit.
 - Union witnesses agreed that when the language was revised during the 2001-2003 negotiations, neither of the parties intended to change the fundamental nature of the benefit as a "retirement benefit."
 - Interpreting the benefit as a "retirement benefit" is consistent with the Parties "Interests" expressed during negotiations.

- The record of “interest issue” from the 2001-2003 negotiations, “How do we compensate “retiring” teachers and staff adequately and fairly?” supports the Employer’s position that the benefit was meant to be a “retirement benefit.”
- The bargaining history demonstrates that both Parties shared a concern about the retention of experienced staff and shared an interest in language that would serve to retain staff and reduce turnover.
- Union witness, Orum recognized that staff safety was an area of concern for the Union and a Union goal toward greater safety was to retain experienced staff.
- The Employer, like the Union, was very interested in staff retention. The Employer was experiencing about a thirty-five percent turnover during the time that Director Larson participated in negotiations. Teachers that the Cooperative had provided extensive training were being lost to other districts that paid higher salaries.
- Employer Exhibits #4 and #5 show that, in regard to severance and retirement benefits, both the Union’s and Employer interests during the 1999-2001 negotiations included “retain and attract qualified teachers,” “[r]educ[e] turnover,” and “[p]rogram continuity.”
- Granting teachers the “Twenty-year Employment Retirement Benefit” upon leaving the Employer for a teaching job with another school district is inconsistent with the objective of reducing staff turnover and retaining experienced staff.
- An interpretation of contract language that is consistent with the purpose of the contract provision is to be favored over one that conflicts with it.
- The Arbitrator should conclude that the CBA language must be interpreted in a manner that is consistent with the Parties’ purpose in negotiating the language.
- The last agreement reached in the 2001-2003 negotiations, in regard to the retirement benefit which was drafted by the Union, for some reason was not included in the final version of the CBA, but provides valuable insight into the intent of the Parties, as the words “retirement benefit” was substituted for “severance pay.” This implies that both parties recognized severance as a benefit that is granted upon retirement rather than simply resigning.
- Minnesota Law supports the Employers interpretation of the CBA and the Arbitrator should look to this law for guidance in defining “retirement.”

- There is no evidence that the Parties intended to define “retirement” different than as defined in Minnesota Law. In fact, the “early retirement” provisions of Article XVII as negotiated in the 1991-2001 CBA’s were similar to what was authorized by Minn. Stat. Section 125.611 (1984), “The Teacher early Retirement Incentive Act (TERIP).”
- Although the provision of TERIP authorizing decreased benefits with advancing age has been repealed, the definition of retirement remains unchanged in the current version of the Statute.
- The definition of “retirement” in TERIP is consistent with the plain meaning of the word and the dictionary definition of it. The Arbitrator should conclude that “retirement” means “withdrawal from active teaching service.”
- The Union’s position is inconsistent with the principle of contract interpretation that all words should be given effect. Under the Union’s interpretation, the word “retirement” has no meaning.
- “The fact that a word is used indicates that parties intended it to have some meaning, and it will not be declared surplus if a reasonable meaning can be given to it consistent with the rest of the agreement.”⁷
- The Union’s interpretation of the word “retirement” would lead to an absurd result.
- “An ambiguous contract should not be interpreted to lead to an absurd or nonsensical result.”⁸
- The unreasonableness of the Union’s position is evident in the Grievant’s testimony. Although the Grievant claims to have “retired” when she quit and went to work for another school district, she testified that she did not “retire” when she was terminated from that district and went to work for a third school district.
- The Grievant’s testimony that even an employee terminated for cause, or any other reason, would be eligible for the “retirement benefit” is contrary to the plain meaning of the term. It leads to the absurd result that the Employer could be liable for providing “retirement benefit” to employees who are discharged for cause.
- At a minimum, the Arbitrator must conclude that there was no meeting of the minds between the Parties as to whether the “retirement benefit” is available to a person in the Grievant’s situation.

⁷ Elkouri & Elkouri, *How Arbitration Works*, at 464.

⁸ Elkouri & Elkouri, *How Arbitration Works*, at 495.

- No one involved in the negotiations for the CBA ever discussed providing the “retirement benefit” to employees in the Grievant’s situation. The only person who could have brought this precise issue up was the Grievant, who failed to do so, even though she was seeking other employment at the time.
- The list of employees who might be eligible for the “retirement benefit,” which included the Grievant, was prepared before she resigned employment and therefore has no relevance to her eligibility once she resigned.

THE TESTIMONY

Union Witness, Joan Moore, a teacher, has been employed at the Cooperative since October 1983. Moore is active in the Union and is Co-President.

Moore testified that she is familiar with the CBA’s and has participated in negotiations.

Moore testified that the language on severance changed because of the age and constructive receipt issues.

Moore testified that there are ten (10) to twelve (12) teachers, who were employed prior to 1991, affected by the severance pay language including the Grievant. The language providing for the 403b plan was added and will replace severance pay once those employed prior to 1991 have ended their employment.

Moore testified she doesn’t recall any discussion during negotiations that Article XVII was for retirees only and was surprised when she learned of the Employers position.

Moore testified that the handwritten notes (Union Exhibit #1) were prepared by Kathy Schmidt after the meeting.

On cross-examination, Moore acknowledged that she has a personal and professional interest in the matter at issue and she has not been told that she wouldn’t get the severance benefit upon retirement.

On cross-examination, Moore acknowledged that she wasn’t a negotiator for the 2001-2003 CBA and wasn’t present during discussions that took place regarding the early retirement benefit.

On cross-examination, Moore testified, when asked about early retirement language serving as a discouragement for teachers to work to an older age, that she never thought of it from that point of view.

On cross-examination, Moore testified that retention of teachers was a Union concern in 2001 and the 403b plan was given as an incentive for those teachers hired after 1991 to stay with the Cooperative.

On cross-examination, Moore testified that no teacher eligible for the severance benefit has retired or left the Cooperative except the Grievant.

On cross-examination, Moore testified that during the 1991-2001 CBA there was no tax problem yet because no teacher was at the required age or had retired.

On cross-examination, Moore testified that her knowledge is based on what she has observed and what she has heard.

On cross-examination, Moore testified that Union issues for the CBA following the 1999-2001 CBA included retention and recruitment of teachers, clean-up of severance language, health insurance and average pay of six school districts in Cooperative.

On cross-examination, Moore testified that the Parties engaged in “interest based bargaining” for the current CBA and the two previous CBA’s.

On cross-examination, Moore testified that safety was an issue for the Union because of volatile students and the Union wanted experienced and trained teachers to work with these students.

On re-direct, Moore testified she did not see a connection between the safety issue and retention.

On re-direct, Moore testified that she was not aware of a connection between severance benefits and eligibility for retirement benefits under TRA.

On re-direct, Moore testified that age discrimination in the early retirement language was also an issue in other districts – she attended an Education Minnesota meeting where she learned of this and the issue of “constructive receipt” from Education Minnesota and other negotiators.

On re-direct, Moore testified that the Grievant is the first teacher with 20 years of service to leave the Cooperative.

On further cross-examination, Moore testified that Mike, Carol, Bob and? had talked to the teachers on behalf of the Union about the 2001-2003 negotiations.

On cross-examination, when asked if retirement means leaving to go work somewhere else, Moore responded, yes.

Union witness, Mike Orum, testified that he works at the Ronald McDonald House as a Macro Social Worker. He has a teacher license for k-12. He previously worked for the

Cooperative from 1996 to 2003, where he was a social worker and member of the bargaining unit.

Orum testified that he was a Union negotiator for the 1999-2001, 2001-2003 and 2003-2005 CBA's, that these were negotiated via interest based bargaining and he is familiar with the current and prior CBA's.

Orum testified that there was a need to change language due to the age discrimination issue and it was discussed in prior negotiations but no teachers were at retirement age so put it off until the 2003-2005 CBA.

Orum testified about the "constructive receipt" issue in that employees could be taxed for the benefit when they become eligible, even though they haven't yet received it. Orum testified that is was also addressed in the 2003-2005 CBA.

Orum testified that there was no discussion on different scenarios of who would qualify for severance based on the reason for their termination.

Orum testified that, in negotiations, the Employer wanted to reward long-term employees.

Orum testified that the hand written notes on Union Exhibit #2 are his.

Orum testified with respect to the language on page 16 of the CBA that, when qualifying teachers have left the Cooperative, the section on severance is to be removed. The names of qualifying teachers were to go into an "Intent Notebook" and the Grievant's name was included on the list.

Orum testified that, about a year ago, he learned from the Grievant she did not receive severance pay and felt betrayed by the Cooperatives decision not to pay a teacher with 23 years of service this benefit.

On cross-examination, Orum acknowledged that he was not involved in the last negotiation sessions for the 2003-2005 CBA.

On cross-examination, Orum testified he was on a subcommittee for the 1999-2001 CBA negotiations but doesn't remember what subcommittee it was – there was a subcommittee for severance but doesn't remember being on it or who else may have been on it.

On cross-examination, Orum testified that the 1999-2001 CBA was the first negotiated via interest base bargaining and the people involved were given training. There were some 14 issues for which subcommittees were established. Once tentative agreement was reached on each issue, it was signed and dated by the Parties.

On cross-examination, Orum testified that as of the 2001-2003 CBA, no teacher had yet qualified for severance pay and intent was to eliminate the potential for age discrimination and to reward long-term employees, making them financially secure.

On cross-examination, Orum testified that the 20-year requirement was not changed but the age scale was taken out. The five-day credit per year was changed to \$30,000, which, based on the average of the teachers who would become eligible, was a roughly equivalent figure.

On cross-examination, Orum testified that there was no intent to change the severance benefit, and as a practical matter the only substantive change was to eliminate the age scale.

On cross examination, Orum testified that a cap was put on the severance benefit for employees hired before October 1, 1991 and the Grievant had not yet resigned when the list of eligible teachers was assembled.

On cross-examination, Orum testified that he thinks retirement is any condition under which a teacher leaves the Cooperative and management did not propose any other definition.

On cross-examination, Orum testified that the Union didn't raise issue with the definition of retirement either and acknowledged that the definition of retirement wasn't raised or discussed by either party.

On cross-examination, Orum acknowledged that, based on a new tentative agreement dated June 18, 2001, language was added for deceased employees but doesn't recall the document or what the changes were.

On cross-examination, Orum acknowledged that the Union had a concern to encourage long term employment as did the Employer and the safety issue is, in part, related to the importance of having experienced teachers and the need to retain them.

On cross-examination, Orum testified that all Union negotiating team members talked to the Union members about new language in the 2001-2003 CBA, but was not aware that the (retirement benefit) language change in the tentative agreement⁹ signed by both parties did not appear in the final version of the CBA.

On re-direct, Orum testified that he doesn't remember the language change to add "retirement benefit" but both bargaining teams agreed to the tentative agreement which included this language. Orum testified that there is always a time gap between the settlement on language issues and on economic issues, because they wait for the other six school districts in the Cooperative to settle before finalizing economic terms.

⁹ Employer Exhibit #2.

On re-direct, Orum testified that a common goal was to reward long-term employees because there was a seven-year average loss during his term of employment with the Cooperative.

On re-direct, Orum testified that, with respect to the last sentence in Article XVII of the 2003-2005 CBA, it was not in the Memorandum of Understanding but was put in the CBA.

On re-direct, Orum testified that elimination of the age scale was to avoid discrimination and to reward long-term employees.

On further cross-examination, Orum acknowledged that the 2001-2003 CBA negotiations took only about two months and was expedited with the bulk of the issues being settled on June 18, 2001, because there was to be change in Cooperative administration.

On re-direct, Orum testified that money was always last, but doesn't remember what happened in the settlement except that it was about the time school started.

Union Witness, Carol Vilendrer, testified that she is currently a teacher in Chaska Schools. Vilendrer testified that she just started at Chaska and taught at Burnsville Schools last year.

Vilendrer testified that she taught 23 years at the Cooperative, is a licensed special education teacher and taught mentally handicapped students. She held twelve different positions at the Cooperative.

Vilendrer testified that she was active in Union affairs and was the Union President, negotiated teacher rights, was on numerous committees, was on the negotiating team for the first CBA and participated in all but two the subsequent CBA negotiations.

Vilendrer testified that she was on the negotiating team for the current [2003-2005] CBA and there was tentative agreement when she left the Cooperative.

Vilendrer testified that the Union wanted to change the CBA language because of age discrimination and constructive receipt concerns raised by Education Minnesota.

Vilendrer testified that in making the 2001-2003 changes they needed to address teachers hired before 1991. She said that, ideally, they would have eliminated Article XVII, Section 1, but just having a 403b would not have protected the long-term teachers.

Vilendrer testified that she had a 403b before it become a matching plan.

Vilendrer testified that during negotiations they talked about other retirement options that did not result in contract language, but she does not recall any discussions about the meaning of retirement.

Vilendrer testified that when she didn't receive severance pay, she called Sue Vento who said, "wait awhile." Later Union President Joan Moore said that the Employer was denying severance because she had not "retired" from teaching.

Vilendrer testified that she left the Cooperative because her philosophy did not match that of administration.

Vilendrer testified that she was on the list of teachers employed before 1991 who had 20 years of service.

Vilendrer testified that there was no discussion of whether "retirement" from teaching was a requirement to qualify for severance pay.

On cross-examination, Vilendrer testified that she began employment with the Cooperative in 1981 and was in the bargaining unit when the "retirement incentive" was first negotiated into the CBA.

On cross-examination, Vilendrer, when asked if she agrees that State Statutes control what can be in a CBA, answered that she doesn't know, but later acknowledged that almost anything in a CBA has a statutory basis.

On cross-examination, Vilendrer testified that retirement was an issue in at least four of the CBA's – the Union wanted health insurance for retirees when they were no longer teaching.

On cross-examination, Vilendrer, when asked her definition of retirement, responded that it means leaving for any reason, including termination for cause.

On cross-examination, Vilendrer testified that retirement is a transition to your next stage of life and there is no need for the word "retirement" – the purpose of severance pay was to recognize years of service.

On cross-examination, Vilendrer testified that she has no recollection of the 2001 tentative agreements (Employer Exhibits E-1 & E-2), one of which contains her signature.

On cross-examination, Vilendrer, when asked if the Union ever proposed to remove the word "retirement", answered first that she didn't know, but later said the Union had not.

On cross-examination, Vilendrer testified that, although she considered her resignation from the Cooperative in the summer of 2004 to be a retirement, she did not consider leaving Burnsville Schools a retirement, as her contract was not renewed for the following school year.

On cross-examination, Vilendrer testified that she had been looking for other teaching employment during negotiations at the Cooperative and, when she resigned in 2004, was

aware that her name was on the list of teachers employed prior to 1991 who were subject to the “Twenty-year Employment Retirement Benefit.”

On cross-examination, Vilendrer testified that, with respect to resignation July 12, 2004, was not thinking of her severance when involved in negotiations – her concern was for the 10 to 12 teachers on the list that were similarly situated to her.

On cross-examination, Vilendrer acknowledged that there was no mention of the word “retirement” in her resignation notice and her supervisor was aware of her plan to resign.

On re-direct, Vilendrer testified that, with respect to page 24 of Exhibit J-3, the date the CBA is signed [July 23, 2004], Union members are given 72 hours to vote on the new CBA and she assumes this meeting was called after the “tentative agreement” was reached.

On re-redirect, Vilendrer testified that, the language in the tentative agreement signed on June 18, 2001 relating to deceased employees, arose because of the death of Tom Kelly, a teacher with less than 20 years of service.

On re-direct, Vilendrer testified that she recalls no discussion about what the word “retirement” meant during negotiations or that it was problematic.

Employer Witness, Kay Larson, former Director of the Cooperative, testified that she retired after 16 years with the Cooperative; that she hired staff, was manager of the business office, managed maintenance staff and supervised the entire team.

Larson testified that, although she was not personally at the bargaining table in 2003-2005 CBA negotiations, she was involved being consulted on issues and concerns by the management team and working with MRVSEC Board members.

Larson testified that she was at the bargaining table for the 1997-1999, 1999-2001 and 2001-2003 CBA negotiations and that the 2001-2003 was her most recent at the table.

Larson testified that she also was involved in CBA bargaining for other bargaining units such as bus drivers, maintenance, and Para-professionals – the only group where she was not involved in bargaining was the Coordinators.

Larson testified that Cooperative staff includes teachers in all special education areas, psychologists, Para-professionals, business office staff, bus drivers and maintenance staff. When she left there were over 200 to 240 employees, including full time and part time and up to 75 to 80 teachers.

Larson testified that the Cooperative was formed in the mid 1970’s and includes the school districts of Shakopee, Prior Lake, Jordan, New Prague and Montgomery.

Larson testified that the Union has been the exclusive representative for teachers at all time she has been with the Cooperative and the teacher unit covers all licensed teaching specialties.

Larson testified that two School Board Members participate in negotiations and report back to the full Board – in interest based bargaining, there was three Board Members who served on the management team and also on subcommittees.

Larson testified that she has known the Grievant since 1985 when the Grievant started with the Cooperative and that the Grievant was actively and directly involved in the negotiation process including presenting positions for the Union.

Larson testified that she is familiar with the CBA provision in dispute [Article XVII] and she was involved in negotiations for the 1999-2001 CBA – the declining age scale was removed in the 2001-2003 CBA due to a concern that it may constitute age discrimination.

Larson testified that “retirement” means that you are leaving the occupation you have been trained and working in. The Cooperative set up consistent norms for retiring employees via awards and recognition of their accomplishments, including Para-professionals – this was done only for employees who retired, not for employees leaving for other reasons.

Larson testified that she was involved in negotiations on Article XVII and there was no discussion of what retirement meant – it never came up or that there was more than one definition.

Larson testified that the Union did not want the longer-term employees to have less than a comparable benefit, i.e. the severance pay calculations were based on their retiring from teaching when they qualified for retirement benefits under the Teacher Retirement Act.

Larson testified that issues #3 and #13, as shown in Employer Exhibit #3, were not resolved at that time because no teachers were immediately qualified and affected - the Parties decided to study the matter in preparation for the next CBA.

Larson testified that the concern of staff attraction and retention was a pervasive theme in both 1999-2001 and 2001-2003 negotiations as was safety which co-relates with retention of experienced staff – employees with experience were going to work for other larger school districts, creating a 35% staff turnover.

Larson testified that the information contained in Employer Exhibit #4 was from tear sheets assembled during interest based bargaining and then typed in current form by office staff.

Larson testified that Employer Exhibit #5 is a bargaining agenda prepared on June 6, 2001 and reflects the strong interest in retention of qualified staff – how do we retain staff

was the theme of these negotiations, which is inconsistent with the Grievant's position to be paid severance when leaving for another teaching job.

Larson testified that Employer Exhibit #6 is another bargaining agenda and the term "TA" means the Parties have agreed on language by signing off and are ready to go before the Board for ratification of the agreement.

Larson testified that the bolded language on Employer Exhibit #2, is what the teachers wanted added and was agreed upon by both Parties – it was added so if teacher dies there was a procedure for payment of severance – Jan Johnson from BMS Ok'd the revision to include this language wanted by the Union and it reflects the final language agreed upon.

Larson testified that no one offered a definition of "retirement" to mean leaving for any reason.

On cross-examination, Larson testified that she believes Employer Exhibit #3 is from 2001-2003 negotiations because the issue of mileage is on it, but acknowledged that she doesn't know exactly when it was generated or that it necessarily is the ultimate list.

On cross-examination, Larson testified that Employer Exhibit #4 is from 1999-2001 negotiations and was prepared at a different step in the negotiations process than was E-3 – E-4 was prepared early in the process because it is not complete.

On cross-examination, Larson testified that safety and severance reflect Union issues.

On cross-examination Larson, when asked, if full retirement today is less common than it used to be? Responded that she knows of situations where some have taken other work.

On cross-examination, Larson, when asked, do people go back to work for the same employer in the same or in some different profession? Responded that "retirees" are those closing out their career in the teaching profession and this is the nature of the discussion when a retiree receives his/her retirement plaque – they are closing out their career with the Cooperative.

On cross-examination, Larson testified that both Parties wanted to attract and retain the best staff possible – the discussion was always about retirement and the desire to have a disincentive for people to leave.

On cross-examination, Larson testified that the Grievant would be eligible [for severance] if she was no longer teaching kids and would also be eligible if staying at home or being a greeter at Wal Mart.

On cross-examination, Larson acknowledged that the CBA [J-1] on page 16 uses the words, "severance pay," and "date of resignation" and "upon departure."

On cross-examination, Larson testified her recollection is that E-4 is a document prepared jointly by the Union and Employer.

On cross-examination, Larson testified that neither the Grievant nor the Union negotiating team ever raised the issue of defining retirement.

On cross-examination, Larson testified that Colleen from the Union was the Scribe and responsible for the language that appears in E-2 – it is not the same as what ended up in the CBA – the phrase “Retirement Benefit” that appears in the tentative agreement does not appear in the CBA.

On cross-examination, Larson reiterated her earlier testimony that if a teacher leaves for another teaching job, the teacher is not eligible for severance pay, but can take their 403b.

Employer Witness, Lezlie Olson, testified that she is the current Director of the Cooperative and began employment there July 2, 2001.

Olson testified that she was involved at the bargaining table for the CBA 2003-2005 negotiations as was the Grievant.

Olson testified she is familiar with the 2001-2003 CBA as it was analyzed in preparation for the 2003-2005 negotiations.

Olson testified that she is also responsible for administration of the CBA and has studied it.

Olson testified that she was present when the Board ratified the CBA in August 2001.

Olson testified that, prior to the instant matter, no one had asserted that if an employee quits and goes to work for another school district they would meet eligibility for severance.

Olson testified that about the latter part of August or September 2004, the Grievant inquired of when her severance would be paid. Olson, after review of the CBA concluded that the full intent of the CBA was for severance to be only for retirement – when you retire, you do not work any longer in your profession.

Olson testified that she had a meeting with the Union and informed them that the severance benefit was based on retirement and the Grievant had not retired.

Olson testified that about 10 other employees meet the eligibility for severance upon their retirement.

On cross-examination, Olson testified that she was a member of the Employer’s four member negotiating team for the 2003-2005 CBA – her role on the team was to be spokesperson for media purposes.

On cross-examination, Olson acknowledged that management did not assert during negotiations that a teacher had to leave teaching to qualify for severance.

On cross-examination, Olson acknowledged that although the word “retirement” is used throughout Article XVII, the words “severance” and “resignation” are also used.

On cross-examination, Olson acknowledged her position that, if the Grievant stayed at home or was a greeter at Wal Mart, she would qualify for severance pay, as long as she was not teaching.

On cross-examination, Olson testified that the list of long-term employees was generated before the 20003-2005 negotiations.

On re-direct, Olson testified that the goal is to keep teachers teaching at the Cooperative – the Grievant is not eligible for severance and won’t become eligible as long as not working as a teacher at the Cooperative.

DISCUSSION

Put simply, the question that needs to be answered in the instant matter is:

Is a teacher who resigns employment to take a teaching job with another school district eligible for the severance pay benefit set forth in Article XVII, Section 1, of the CBA?

However, to reach a decision on the above question, a number of other questions must first be answered:

- Was retirement a condition of eligibility for the severance pay benefit as set forth in the CBA prior to the 2001-2003 CBA,
- If the answer to the above question is yes, did the changes negotiated by the Parties into the 2001-2003 and later CBA’s change this as a condition of eligibility?
- If retirement continued to be a condition of eligibility in the 2003-2005 CBA, what constitutes retirement?
- Has there been any practice in administering Article XVII that gives indication of the Parties intent?

There is little question that Article XVII, as it appeared in CBA’s prior to the 2001-2003 CBA, was an “early retirement incentive.” Employees accrued credits for each year of

service and when they met the criteria of 50 years of age and 20 years of service they become eligible for “severance pay” upon “early retirement.” The “severance pay” for early retirement was paid based on an age scale whereby employees who retired at an earlier age received a larger severance pay than employees who retired at a later age. In fact, employees who waited to retire until they reached normal retirement age (65 or later) were not eligible for any severance pay.

The record shows that the “early retirement” plan set forth in Article XVII was authorized by and patterned after a state statute referred to as “The Teacher Early Retirement Incentive Act, Minn. Stat., Section 125.611 (1984).

The current statute providing authorization for early teacher retirement is found in Minn. Stat., Section 122A.48 “Teacher Early Retirement Incentive Program.” Qualifying criteria for early teacher retirement set forth in the statute is similar to that set forth in Article XVII of the 1999-2001 and earlier CBA’s.¹⁰

Minn. Stat., Section 122A.48 also contains a definition of “retirement” applicable to teacher early retirement incentive plans. This definition defines “retirement” as “termination of services in the employing district *and* withdrawal from active teaching service.” An exception to total withdrawal from active services is provided in that a teacher who has benefited from an early retirement incentive may be employed as a substitute teacher after such retirement.¹¹

¹⁰ Minn. Stat., Section 122A.48 Teacher Early retirement Incentive Program

Subd. 1. Teacher defined. For purposes of this section, “teacher” means a teacher as defined in section 122A.15, Subd. 1, who:

(a) is employed in a public elementary or secondary school in the state and

(b) either

- (1) (i) has at least 15 total years of full-time teaching service in elementary, secondary, and technical colleges, or at least 15 years of allowable service as defined in sections 354.05, subd. 13; 354.092; 354.093; 354.094; 354.53; 354.66; 354A.011, subd. 4; 354A.091; 354A.092; 354A.093; 354A.09; or Laws 1982, chapter 578, article II, section 1 and
 - (ii) has or will have attained the age of 55 years but less than 65 years as of the June 30 in the school year during which an application for an early retirement incentive is made, or
- (2) has at least 30 total years of full-time teaching service in elementary, secondary, and technical colleges, or at least 30 years of allowable service as defined in sections . . .

¹¹ Minn. Stat., Section 122A.48,

The statute also sets forth the procedures to be followed by a teacher wishing to qualify for an “early retirement incentive.”¹² It is noted that the statute provides that a teacher’s application for the early retirement incentive is subject to approval by the school board, a requirement also contained in the pre-2001-2003 CBA.¹³

A fair reading of the language of Article XVII as it existed prior to the 2001-2003 amendments is that if a teacher accepted the early retirement incentive (severance) the teacher agreed to withdraw from active teaching, with the exception of substitute teaching.¹⁴

Based on the foregoing, the Arbitrator finds that the pre-2001-2003 CBA language of Article XVII was an early retirement incentive program established under authority of state statute and a teacher, to qualify for the incentive, must comply with the statutory definition of “retirement.” The record shows that there were no early retirements occurring under this language for there was a lack of teachers who met the requirements.

Subd. 2. Retirement. For purposes of this section, “retirement” means termination of services in the employing district and withdrawal from active teaching service.

Subd. 3. Employment as substitute. Notwithstanding the provisions of subd 2, a teacher who has entered into an agreement for termination of services and withdrawal from active teaching service with an early retirement incentive may be employed as a substitute teacher after retirement.

¹² Minn. Stat., Section 122A.48

Subd. 5 Applications. A teacher meeting the requirements of subdivision 1, may apply to the school board of the employing district for a contract for termination of services, withdrawal from active teaching service, and payment of an early retirement incentive. This application must be submitted on or before February 1 of the school year at the end of which the teacher wishes to retire. A school board must approve or deny the application within 30 days after it is received by the board. The amount of the early retirement incentive shall be agreed upon between the teacher and the school board. The early retirement incentive shall be paid by the employing district at the time and in the manner mutually agreed upon by a teacher and the board.

¹³ Article XVII, SEVERANCE PAY

Teachers who are at least 50 years of age and have completed twenty (20) years of professional services in the appropriate unit in the MRVSEC shall be eligible for severance pay pursuant to the provisions of this article upon submission of a written resignation accepted by the District. [Emphasis Added]

It is noted that the latest amendment to Minn. Stat., Section 122A.48 occurred in the year 2000.

The record shows the following changes in Article XVII between the 1999-2001 CBA and the 2003-2005 CBA.

- A “Section 1” was added to the 2003-2005 CBA and titled “Twenty-year Employment Retirement Benefit.”
- Under the 2003-2005 CBA, teachers employed prior to October 1, 1991 retained their eligibility to qualify for severance pay, but employees hired later were not eligible.
- The twenty-year requirement was retained but the requirement to be at least 50 years of age does not appear in the 2003-2005 CBA.
- The requirement that a teacher applying for severance submit a written resignation subject to acceptance by the Board does not appear in the 2003-2005 CBA.¹⁵
- The method for determining the amount of severance was changed from a year-by-year credit system to a flat amount of \$30,000 in the 2003-2005 CBA.¹⁶
- The declining age scale does not appear in the 2003-2005 CBA.¹⁷
- Teachers hired before October 1, 1991, who remain eligible for severance pay, may also participate in a new 403b plan where the Employer provides matching contributions, but their severance pay is subject to reduction by the amount of employer contributions to their 403b plan.
- A “Section 2” was added to the 2003-2005 CBA and provided how severance eligibility was to be handled if such eligibility triggered tax liability based on the principle of “constructive receipt.” Essentially, this provision provides that if such tax liability is assessed, the Employer will pay the tax and, at such time as the teacher retires, the Employer will recover the tax paid via a reduction in the teacher’s severance pay. Also in this section is a provision that, when the last teacher impacted by the severance pay has ended employment, Sections 1 and 2 will be removed from the CBA.

¹⁵ Although this requirement is not in the current version of Article XVII, Section 1, it is a requirement under Minn. Stat., Section 122A.48, Teacher Early Retirement Incentive Program, Sub. 5

¹⁶ The record shows that this amount was determined by calculating what the average teacher would be eligible to receive under the 1999-2001 CBA when eligible for Teacher Retirement Act benefits.

¹⁷ It is noted that the age scale provision was also repealed in the Teacher Early Retirement Incentive Act.

- A “Section 3” was also added to the 2003-2005 and provides for voluntary teacher participation, with matching Employer contributions, in a 403b plan. As noted earlier, teachers hired prior to October 1, 1991 (teachers with over 10 years service) are eligible for both the severance and 403b plan. Other teachers receive matching Employer 403b contributions based on their length of service. The maximum lifetime Employer contribution is \$25,000.

To be examined is whether the above changes from the 1999-2001 CBA have changed the nature of severance pay from a retirement benefit to something else. The record shows that the Parties had three objectives in making these changes.

1. To remove the age scale from the severance pay language because of concern that its application would constitute age discrimination. (It is noted that there had been no actual application of the language because no eligible teacher had yet met the qualification requirements for severance pay).
2. To address the issue of “constructive receipt” whereby an employee having become eligible for severance pay, although not actually receiving it, would immediately be liable for tax on its value.
3. To provide a meaningful incentive for employees that would aid in recruitment and retention and would be roughly equivalent to the value of the severance pay benefit as established in the 1999-2001 and prior CBA’s.

The Arbitrator finds that eliminating the age scale, in effect, converted severance pay from an “early retirement incentive plan” to a “retirement benefit plan.” Under the age scale, there was an incentive for teachers to retire early, for to do so increased the amount of severance pay they would receive. If they waited until normal retirement age to retire, they were not eligible for any severance pay. Under language negotiated in the 2003-2005 CBA, all retiring employees with 20-years of service, who were employed prior to October 1, 1991, are eligible for the \$30,000 retirement benefit. However, the severance pay plan as set forth in Article XVII of the 2003-2005 CBA can be an early retirement incentive because the \$30,000 severance pay may make earlier retirement financially feasible.

The language negotiated into the CBA with respect to the “constructive receipt” issue, renders this issue moot as a factor in the instant case. Even if tax is declared due upon a teacher’s eligibility for severance pay, the consequence for the teacher is the same as it would have been without the tax consequence.

Finally to be determined is whether, considering the aforementioned changes in Article XVII, “retirement” continues to be an eligibility requirement for severance pay. The Arbitrator finds in the affirmative. The addition of Section 1, titling the severance pay language “*Twenty-year Employment Retirement Benefit*” is persuasive evidence of the Parties intent.

Further, the severance pay as set forth in Article XVII of the 2003-2005 CBA continues to fall under the statutory “Teacher Early Retirement Incentive Plan?” A review of “The Teacher Early Retirement Incentive Program” reveals that there is no particular incentive structure specified.¹⁸ Minn. Stat., Section 122A.48, Subd. 5, in part provides:

“The amount of the early retirement incentive shall be agreed upon between the teacher and the school board. The early retirement incentive shall be paid by the employing district at the time and in the manner mutually agreed upon by a teacher and the board.”

In the instant case the terms of the early retirement plan have been agreed upon for all teachers via the collective bargaining process and are set forth in the CBA.

For the above reasons, the Arbitrator finds that the changes made in Article XVII of the 2003-2005 CBA do not change the applicable definition of “retirement,” as set forth in Minn. Stat. Section 122A.48, Subd. 2.

Also to be considered is evidence relating to the intent of the Parties in negotiating the changed language and any practice bearing on the issue in dispute. The testimony of both Union and Employer witnesses clearly indicates that there was no discussion of what the definition of retirement was intended to be. There is also no past practice to reveal the intent of the Parties because, except for the Grievant, there has been no teacher eligible or claiming the severance pay benefit.

The language of Article XVII provides insight into the Parties intent. The Arbitrator finds that there is sufficient reference to “retirement” in Article XVII of the 2003-2005 CBA to support the characterization of severance pay as a “retirement benefit.” The addition of Section 1, which is titled “Twenty-year Employment Retirement Benefit”, is persuasive evidence. In addition, the terms “retirement” and “retire” appear some four times in the language of Section 1 and Section 2.

The Arbitrator does not find the words “resignation” and “departure” as used in Section 1 to be inconsistent with use of the term “retirement.” “Resignation” is a more general term that can include “retirement” as a reason. “Departure” is also a more general term that can include a number of reasons for the departure, including retirement.

The terms, “retires” and “actually retires,” as used twice in Section 2 clearly associate severance pay with the act of retiring. The terms, “resigns” and “severs employment,” also used in Section 2, are not viewed by the Arbitrator as inconsistent with use of the terms “retires” and “actually retires”, for the same reasons as pointed out above.

The Union advanced several arguments in support of its position that also need to be addressed:

1. Requiring retirement as a condition for severance pay is unworkable because a teacher may believe or say they are retiring, but later may return to teaching.

This is an important point and the Arbitrator has given it great deal of consideration, because a principle of contract interpretation is that it not be interpreted to produce an unworkable result. The Arbitrator finds direction this issue in the statute, Section 122A.48, Section 5, where it sets forth the conditions for applying for the retirement benefit and approval by the school board. The teacher, by accepting the retirement benefit (severance) is bound by the statutory conditions associated with accepting it, which includes withdrawal from active teaching service. Should the teacher not comply with these conditions, the school Board would appear to have a cause of action to recover severance paid the teacher.

2. Retirement means retirement from employment with the Employer, not from teaching.

A rule of contract interpretation is that words are to be given their common and customary meaning, except where there is evidence the parties intended otherwise. In the instant case, the record is clear, from the testimony of both Union and Employer witnesses, that the meaning of “retirement” was never brought up or discussed by the Parties.

The common or standard dictionary definition of the term “retire” or “retirement” is consistent with withdrawal from ones occupation.¹⁹ The common meaning of the term is further bolstered by the statutory definition of “retirement” as it applies to teachers employed by a school district. This statutory definition specifies “withdrawal from active teaching service.”²⁰

3. The Employers claim that the Parties intended to make certain language changes in the 2001-2003 CBA is without merit as none of the signatures remembered negotiating this language. The language does not appear in the CBA and should be given no weight.

The language referenced above appears in Employer Exhibit #2, which was described by the Employer as a “tentative agreement” reached by the Parties when negotiating the 2001-2003 CBA. Some ten people, making up both the Union and Employer negotiating teams, signed the document. The document has some language bolded that, according to the testimony of witnesses, represented changes the Parties had agreed to make in the CBA. However, this bolded language does not appear in the final version of the CBA and there was no explanation given for its absence. Because this language does not

¹⁹ Merriam Webster’s Collegiate Dictionary, Tenth Edition, defines “retirement” as, “withdrawal from one’s position or occupation or from active working life.”
Random House Webster’s College Dictionary, Copyright 1992, defines “retire” as, “to give up or withdraw from an office, occupation or career.”

²⁰ Minn. Stat., Section 122A.48, Subd. 2.

appear in the CBA, its only relevance to the Arbitrator is awareness of what issues the parties were addressing in negotiations.

4. The Employer's financial liability to the Grievant is identical to what it would have owed her had she left teaching.

It is true that, if the Grievant had withdrawn from teaching, the severance cost to the Employer would have been the same as claimed in the instant grievance. However, this misses the point. The effect of the severance, in keeping with statutory authority, is to reward teachers when they leave the teaching profession. The Grievant was not leaving the teaching profession but merely performing teaching activity in another school district.

For the foregoing reasons, the Arbitrator finds that retirement, as defined in the Teacher Early Retirement statute, is a condition of eligibility for severance pay as set forth in Article XVII, Section 1 of the 2003-2005 CBA.

AWARD

The grievance is denied. The Grievant in resigning employment to accept a teaching position with another school district was not in compliance with the statutory definition of retirement, which is a requirement to qualify for the twenty-year employment retirement benefit as set forth in the CBA.

CONCLUSION

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this grievance matter.

Issued this 7th day of February 2006 at Edina, Minnesota.

ROLLAND C. TOENGES, ARBITRATOR